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Bridging the legitimacy gap – why INGOs should have clarity in their legal status as international actors

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By Dr Erla Thrandardottir and Dr Vincent Keating

Over the past few decades, INGOs have become influential actors in international politics, gaining privileged access to international debates and policy processes. They are by and large accepted by major states and main multilateral and bilateral organisations as de facto legitimate actors within the international system. Though their role and purpose can vary widely from emergency relief to long-term development aid, INGOs can typically be found where the state is perceived to fall short, either in its policies or actions.

This institutionalisation of INGOs as de facto legitimate actors has also energised a number of voices criticising INGOs, who are asking probing questions about sovereignty, the limits of INGOs' power, and INGO accountability. [The International Center for Not-for-Profit Law](#) has recently documented a global trend in domestic INGO legislation that does not seem to be in favour of strengthening the legal status of INGOs. In response to such criticisms, INGOs have instituted a number of reforms to defend their de facto legitimacy in the international system, including transparency measures and internationalising their organisations by moving their headquarters to the global south.

In our paper, [recently published in International Politics \(unpaywalled pre-print\)](#), we argue that existing solutions to the persistent problem of INGO legitimacy are mainly addressing the sociological (de facto) side of their legitimacy and largely overlooking what we believe is a neglected problem for INGOs: their lack of de jure legal legitimacy. We further suggest that this disjunction between the de facto and de jure legitimacy of INGOs can be addressed through Beetham's theory of legitimation (1991,2012), which enables us to think about legitimacy in a way that accounts for both its legal and socio-political dimensions.

There are two key reasons for taking such an approach. First, gaining legal legitimacy would provide INGOs a bulwark against recent attempts by larger states to regulate unwanted INGOs out of existence. While certainly not a panacea for INGOs' problems, legal legitimacy can support their sociological legitimacy and help INGOs to navigate difficult political waters. Second, any international legal recognition will almost certainly come with rules, which can be created to alleviate the concern states in the global south may have about the power of large northern INGOs operating in the global south, where states may lack the capacity to regulate INGO activity within their territory.

Still, an important question remains: how should this process proceed? We propose that a template for INGO legal legitimacy based on the principles that underpin the regulation of English charity law, combined with a gradualist process for the institution of INGOs' international de jure legitimacy.

The largest worry for states in this process would be, in a pluralist world, a marked increase in ideological competition with now legally-embedded INGOs. We, therefore, argue that recognition must first be given on the basis of values that reflect a global solidarism, which will minimise political conflict over goals/ideas, even if the means through which these are achieved may still be in dispute.

It is therefore important to introduce a gradualist process that can serve as the basis for the normalisation of INGO de jure legal recognition without creating a large shock in the international system, and from which debates over the expansion of the criteria can be held. We propose that English charity law is a good template for such a gradualist process because the principles underpinning inclusion and exclusion, namely exclusively charitable purpose and demonstrable public benefit, arguably reflect basic global solidarist values in the international community. Even if states or other actors may debate the means and priorities of such base values, it is unlikely they will make a political or cultural argument against them.

In sum, we argue that there is something to be gained from focusing not only on how to strengthen INGOs' de facto legitimacy but also to include options about giving them de jure legal legitimacy – and that this can benefit both states and INGOs in a process of order-making in the international system. As this approach calls for a major change, we believe our gradualist approach using English charity law as an initial template for change is a reasonable starting point to think about how to take this process forward.

Erla Thrandardottir is a lecturer in Humanitarian Studies and Conflict Response at HCRI, she has published previously on NGO legitimacy in journals such as [Voluntas](#), [Representation](#), and the [British Journal of Politics and International Relations](#). Erla is currently working on papers looking at problems of NGO representation and legitimacy, as well as preparing a project on INGO legality.

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